

Group IV: Claims 65-76, drawn to a system and method for delivering medication having a dual wave bolus delivery function, classified in class 604, subclass 30;

Group V: Claims 77-82, drawn to a system and method for delivering medication having an RF remote pair, classified in class 128, Digest 13.

Applicants elect Group II, namely claims 23-58, with traverse.

35 U.S.C. §121 provides that "If two or more independent and distinct inventions are claimed in one application, the Commissioner may require the application to be restricted to one of the inventions." M.P.E.P. §802.01 deviates from the plain meaning of "independent and distinct" by interpreting "and" to mean "or". The Patent Office relies on the absence from the legislative history of anything contrary to this interpretation as support for their position that "and" means "or". Applicants respectfully note that this position is contrary to the rules of statutory construction. Restriction between two dependent inventions is not permissible under the plain meaning of 35 U.S.C. §121.

According to M.P.E.P. §803, there are two criteria for a proper restriction requirement. First, the two inventions must be independent and distinct. In the outstanding Office Action, the Examiner does not assert that the inventions of the claim groups listed above are independent. In addition, there must be a serious burden on the Examiner if restriction is not required. Consequently, even if the first criterion has been met in the present case, which it has not, the second criterion has not been met.

Consequently, Applicants respectfully request the Examiner reconsider and withdraw the restriction requirement. It is also submitted that this application is now in good order for allowance and such allowance is respectfully solicited. Should the Examiner believe minor matters still remain that can be resolved in a telephone interview, the Examiner is urged to call Applicants' undersigned attorney.

Respectfully submitted,

GATES & COOPER LLP
Attorneys for Applicant(s)

Howard Hughes Center
6701 Center Drive West, Suite 1050
Los Angeles, California 90045
(310) 641-8797

Date: March 24, 2004

By: 

Name: William J. Wood

Reg. No.: 42,236

WJW/